

Town of Amherst
Zoning Board of Appeals - Special Permit

DECISION

Applicant: Deborah Kruger
5 Eames Place, Amherst Ma, 01002

Date application filed with the Town Clerk: February 6, 2009

Nature of request: Special Permit to allow the conversion of a non-conforming single family dwelling to an owner occupied two-family residence under Section 9.22 and 3321 of the Zoning Bylaw.

Address: 5 Eames Place (Map 11D, Parcel 230, R-G Zoning District)

Legal notice: Published February 25 and March 4, 2009 in the Daily Hampshire Gazette and sent to abutters on February 20, 2009

Board members: Thomas Simpson, Jane Ashby and Albert Woodhull

Submissions: The petitioner submitted the following information with the application:

- One (1) copy of a memorandum, ZBA FY2009-00025, dated March 6, submitted by staff;
- One (1) copy of the ZBA application filed with the Town Clerk, February 6, 2009;
- One (1) copy a Project Overview prepared by the applicant, dated February 3, 2009;
- One (1) copy of the completed Management Plan form;
- One (1) copy of a letter from Charles Dauchy, dated August 29, 2008;
- One (1) copy of an 8 ½ x 11 parking plan, prepared by the applicant;
- One (1) copy of a letter from Bruce Austin, dated February 1, 2009;
- One (1) copy of the Planning Board Report to Town Meeting dated November 2008;
- One (1) copy of the proposed condition, Lower Level plans (drawing number A-1);
- One (1) copy of the existing condition, Upper Level plans prepared by Nina Weyl Architects, last revised May 17, 2003;
- One (1) copy of existing condition Elevations as prepared by Nina Weyl Architects, last revised May 17, 2003;
- One (1) copy of a Site Plan, titled Subdivision Approval Not Required, prepared by Harold Eaton Associates dated September 15, 2008.
- One (1) copy of the Decision of ZBA FY1978-80, submitted by staff.
- One (1) copy of a letter from Stephanie Ciccarello, Wetlands Administrator, dated March 3, 2009, submitted by staff.

For the public hearing of March 12, 2009, the applicant submitted the following additional information:

- An 11 x 17 map identifying 14 multifamily homes in the
- neighborhood of 5 Eames Place;
- An overview of information about the property and application; and
- Four (4) letters from neighbors in support of the project.

Site Visit: March 10, 2009

The Board met with the applicant, Deborah Kruger, and observed the following:

- The location of the existing raised ranch style, single family dwelling, with attached garage and decking;
- The south side of the residence and decking situated within the required side yard setback;
- The location of the existing circular driveway and parking areas;
- The interior of the lower level of the dwelling, under renovation, which will be used as the second unit.

Public Hearing: March 12, 2009

The application was presented by Deborah Kruger. She was accompanied by Richard Adams. Ms. Kruger stated the following:

- She is seeking a Special Permit to change designation of her house from one family to two family;
- Purchased home in 1993 and at that time it was being used a two family home and contained two kitchens;
- At the time, she was not aware that it was an improper use of the house;
- Met with staff from the Planning Department to determine how to legalize the use of the property as a two family;
- Arranged to purchase lot area from the adjacent property owner to meet the requirements of the Zoning Bylaw for a two family residence and completed the ANR process with the Planning Board;
- Hired a wetland consultant to verify that there were no wetland soils or vegetation on the property;
- Had numerous meetings with Richard Adams, an electrician, and the Building Commissioner to determine what code issues needed to be addressed for a two family house;
- Also worked with Bruce Austin to review and upgrade the fire safety requirements for a two family use;
- Conducted research using the Towns GIS system and identified 14 other multi-family uses in the area and prepared a map showing these parcels;
- Went to neighbors and obtained four (4) letters of support from neighbors.
- She addressed the concerns of her neighbor, Paul Lawler, regarding non-owner occupied rental homes, by explaining that she intends to continue to raise her family here and to reside on the property;
- She noted that the Town Zoning Bylaw was recently changed to allow two-family residences by right under Site Plan Review. However, it was found that the house is non-conforming to the side property line by one (1) foot.

- The Building Commissioner determined that the application should remain under Special Permit by the Zoning Board;
- The plans submitted show four (4) parking spaces, two (2) parking spaces per unit, with an additional space available in the garage. A restriction could be included in the lease that would limit the number of vehicles;
- Typically, she rents to graduate students or students who are here from abroad.
- There have been no police calls about her home.

Mr. Simpson noted the applicant's submission of the neighborhood map showing the multifamily housing units shown, and a summary of the project.

Mr. Simpson read letters from Nicholas Grabbe & Elizabeth Krogh of 84 Eames Ave, Paul & Celeste Lawler of 86 Chestnut Street, Judy Smith of 111 Chestnut Street and Phyllis & Tony Pike of 88 Eames Avenue, all of which supported that applicant's request for a two-family residence.

Mr. Simpson asked the applicant to provide information related to the proposal. Ms. Kruger stated the following:

- The house is a "raised ranch" and the rented unit will be in the lower level;
- The lower level will contain three (3) bedrooms, living room, kitchen and full bath, three (3) egresses and an additional egress window and independently wired fire and carbon monoxide detectors;
- The parking area, as shown on the plan, shows one space along the west side of the house and three spaces on the eastern side of the house;
- The upper unit will also contain three bedrooms and is where she will live.

Mr. Simpson asked if there is any area outside for use by the tenants. Ms. Kruger stated that the yard is large and contains gardens and spaces for recreation and cookouts, for example.

Mr. Woodhull asked if the garage is currently used to keep a vehicle. Ms. Kruger stated that she does not use the garage for a vehicle but rather for storage. Ms. Kruger stated that the tenants may use the garage to store things, such as bicycles.

Mr. Simpson asked if there was anyone from the public who would like to speak to the application.

Richard Adams stated that he is helping the applicant complete the permitting and renovation required to create the two-family residence. He stated that he has over twenty years experience as an electrician and property manager, has known the applicant for a long time and helps Ms. Kruger manage the building. He stated that the house was renovated to be up to code and that the safety of the tenants and the owner were a top priority.

Ms. Ashby made a motion to close the evidentiary portion of the public hearing. Mr. Woodhull seconded the motion. The Board voted unanimously to close the public hearing.

Public Meeting:

Since Town Meeting recently approved an amendment to the Zoning Bylaw allowing two family residences in the R-G district by right, the Board determined that they would not condition the permit to expire upon change of ownership. The Board determined that a Management Plan shall be submitted to the Board for review and approval at a public meeting if the property changed ownership. The Board determined that since there are no exterior changes to the building, Sections 3.2040 and 3.2041, Design Review Standards, are not applicable.

The Board spent the remainder of the public meeting crafting conditions of the Special Permit.

Findings:

The Board finds under Section 10.38 of the Zoning Bylaw, Specific Findings required of all Special Permits, that:

10.380 and 10.381 – The proposal is suitably located in the neighborhood and is compatible with existing uses in the Zoning District. This Special Permit allows for the creation of an owner occupied two family dwelling on a property containing adequate lot area and parking spaces, and does not require any changes to the exterior of the existing building. The subject property is located in the R-G Zoning District. On November 17, 2008, Town Meeting members voted to adopt Article 7 which allows the creation of two-family dwelling by right under Site Plan Review with the Planning Board. Because of an existing dimensional non-conformity, a Special Permit was required for this use. This Special Permit, nonetheless, supports the policy of the draft master plan to “allow modest increases in density in those areas of Amherst where it is most appropriate...” The applicant provided information identifying 14 other multi-family residences in the area. The permit requires that the two-family dwelling is owner occupied thus maintaining compatibility with the other owner occupied residences in the neighborhood.

10.382 and 10.385 – The proposal would not constitute a nuisance and reasonably protects the adjoining premises against detrimental or offensive uses on the site. The use will not increase or contribute any air pollution and all exterior lighting will be downcast to eliminate light from casting onto adjacent properties. The two family dwelling will be owner occupied and provides four (4) parking spaces in accordance with the Zoning Bylaw.

10.383 and 10.387 – The proposal would not be a substantial inconvenience or hazard to abutters, vehicles or pedestrians and the proposal provides convenient and safe vehicular and pedestrian movement within the site and in relation to adjacent streets. This Special Permit allows for the creation of an owner occupied two family dwelling on a property containing adequate lot area, parking spaces and safe vehicular and pedestrian access to and from adjacent public streets. The two family dwelling is compatible with the neighborhood which is comprised of single and multifamily dwellings, and will not contribute to the deterioration of current levels of traffic.

10.384 – Adequate and appropriate facilities would be provided for the proper operation of the proposed use. The two-family dwelling will be contained within the existing dwelling and no exterior changes are required. The interior renovations included upgrading of utilities in accordance with the Massachusetts Building Code requirements. The permit provides parking spaces for 4 vehicles in accordance with Section 7.000 of the Zoning Bylaw. The applicant obtained a portion of land from an adjacent property owner to ensure that the use conforms to the lot area requirements, for additional dwelling units, as required in Table 3 of the Zoning Bylaw.

10.386 – The proposal ensures that it is in conformance with the parking and sign regulations (Articles 7 and 8, respectively) of the Zoning Bylaw. The permit provides parking spaces for 4 vehicles in accordance with Section 7.000 of the Zoning Bylaw. There are no signs associated with this use.

10.389 – The proposal provides adequate methods of disposal and/or storage for sewage, refuse, recyclables and other wastes because the property is connected to Town water/sewer, and the Management Plan describes the refuse/recyclable disposal process. The owner provides storage for trash, recycling and tenant belongings in the garage and the owner is responsible for its removal.

10.392 – The proposal provides adequate landscaping, including the screening of adjacent residential uses. The property contains existing vegetation, lawn areas and gardens and there are no changes to the landscaping as part of this use. The property is screened from adjacent properties by existing vegetation. The owner will be responsible for lawn and landscaping maintenance.

10.395 – The proposal does not create disharmony with respect to the use, scale and architecture of existing buildings in the vicinity. There are no changes to the exterior of the existing dwelling as part of this use. The existing dwelling is a “raised ranch” design and is situated within a residential neighborhood containing a mix of different types of single and multi-family dwellings.

10.398 – The proposal is in harmony with the general purpose and intent of the Zoning Bylaw and it protects the health, safety, convenience and general welfare of the inhabitants of the Town of Amherst. This Special Permit allows for the creation of an owner occupied two family dwelling on a property containing adequate lot area, parking spaces and does not require any changes to the exterior of the existing building. The use will provide needed rental housing whose scale, design, and impacts are in character with the neighborhood.

Public Meeting – Zoning Board Decision

Mr. Simpson made a motion to APPROVE the permit, with conditions. Ms. Ashby seconded the motion.

For all of the reasons stated above, the Board VOTED unanimously to grant a Special Permit to allow the conversion of a non-conforming single family dwelling to an owner occupied two-family dwelling under Section 9.22 and 3321 of the Zoning Bylaw, as applied for by Deborah Kruger, at 5 Eames Place (Map 11D, Parcel 230, R-G District), with conditions.

THOMAS SIMPSON

JANE ASHBY

ALBERT WOODHULL

FILED THIS _____ day of _____, 2009 at _____,
in the office of the Amherst Town Clerk _____.
TWENTY-DAY APPEAL period expires, _____ 2009.
NOTICE OF DECISION mailed this _____ day of _____, 2009
to the attached list of addresses by _____, for the Board.
NOTICE OF PERMIT or Variance filed this _____ day of _____, 2009,
in the Hampshire County Registry of Deeds.

Town of Amherst
Zoning Board of Appeals

SPECIAL PERMIT

The Amherst Zoning Board of Appeals hereby grants a Special Permit, ZBA FY2009-00025, to allow the conversion of a non-conforming single family dwelling to an owner occupied two-family dwelling under Section 9.22 and 3.321 of the Zoning Bylaw, as applied for by Deborah Kruger, at 5 Eames Place (Map 11D, Parcel 230, R-G District), with the following conditions:

1. One (1) of the dwelling units on the property shall be owner occupied;
2. The two (2) dwelling units shall be constructed and used in accordance with the floor plans stamped approved by the Zoning Board of Appeals dated March 12, 2009;
3. The property shall be managed according to Management Plan stamped approved by the Zoning Board of Appeals dated March 12, 2009;
4. There shall be no more than four (4) vehicles parked outside on the property. All vehicles shall be parked on improved surfaces and shall be located in accordance with the Parking Plan stamped approved by the Zoning Board of Appeals dated March 12, 2009;
5. The two-family residence shall be registered as a rental unit with the Town of Amherst Board of Health;
6. All exterior lighting shall be downcast;
7. A reflective street address sign, visible from both directions, shall be installed and maintained;
8. The name and telephone number of the owner shall be provided to and recorded with the Board of Health, Inspection Services and the Fire Department;
9. This permit is subject to Section 14 of the Zoning Bylaw, Phased Growth. Development authorization is available as of April, 2009.

THOMAS SIMPSON, Chair
Amherst Zoning Board of Appeals

DATE